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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In Re ACACIA MEDIA TECHNOLOGIES CORPORATION	Case No. C-05-01114 JW **ROUND 2 CABLE DEFENDANTS' CLAIM CONSTRUCTION BRIEF ('863 PATENT)** Hearing Date: September 7-8, 2006 Time: 9:00 a.m. Judge: Honorable James Ware

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The Round 2 Cable Defendants[1] submit the following claim-construction brief regarding disputed terms of the '863 patent. This brief does not address the '720 patent, which is not asserted against any of the defendants joining in this brief. The '720 patent is asserted against the Round 2 Satellite Defendants, who are filing a separate claim-construction brief.

I. INTRODUCTION

Once again, the Court faces the unenviable task of trying to make sense of a set of terms in the Yurt family of patents that defy comprehension. Like the '702, '275, and '992 patents that the Court has already construed, the '863 patent uses claim terms that the patentees carelessly patched together, without logic, sense or contextual support.

In one sense, the Court's task in trying to construe the '863 patent is even more difficult than the claim construction it has performed so far. Until now, the Court could at least examine the specification as the guidepost it is meant to be in the claim-construction exercise. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005) (noting that the specification is "one of the best ways to teach a person of ordinary skill in the art how to make and use the invention"). Even if the conclusion from this examination was that the terms (such as "receiving system") were used in contradictory and incomprehensible ways, there was, at minimum, some context for such a decision.

In the '863 patent, the applicants simply jettisoned any effort to tie the terms used in the claims to the specification. Instead, they tried to define new claim scope by inventing terms that have no commonly-accepted meaning and that *never* appear in the specification, such as "central processing location", "local distribution system", and "subscriber receiving station". Now faced with construing those terms, Acacia flings at the Court a series of unsupported and unsupportable constructions designed only to support its end-game: to have its patents read on just about every device or process that delivers information and entertainment to a home in the United States. When it suits its purposes, Acacia simply ignores words in the terms it is construing (e.g., the word “local” in “local distribution system”). At other times, Acacia equates terms that the patents plainly distinguish (e.g. “subscriber receiving station” and “reception system”).

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[1] The following defendants join Comcast Communications LLC and Insight Communications, Inc. in this briefing: Charter Communications, Inc., Armstrong Group, Block Communications, Inc., East Cleveland Cable TV and Communications LLC, Wide Open West Ohio LLC, Massillon Cable TV, Inc., Mid-Continent Media, Inc., US Cable Holdings LP, Savage Communications, Inc., Sjoberg's Cablevision, Inc., Loretel Cablevision, Arvig Communications Systems, Cannon Valley, Communications, Inc., NPG Cable, Inc., Hospitality Network, Inc., Coxcom, Inc., Cable One, Inc.; Mediacom Communications Corporation; Bresnan Communications; Cequel III Communications I, LLC (dba Cebridge Connections)

This Court has rejected such efforts in the past, and the Court should now put an end to Acacia’s cynical exercise with respect to the ‘863 patent. The law *requires* patents to be “sufficiently precise to permit a potential competitor to determine whether or not he is infringing[.]” *Morton Int'l v. Cardinal Chem. Co.*, 5 F.3d 1464, 1470 (Fed. Cir. 1993). With respect to the invented terms in the ‘863 patent, no potential competitor and no skilled artisan can make such a determination even after poring over the patent documents. As set forth in detail below, the Court should find that those terms are indefinite, and that the claims that include them are invalid for failing to “particularly point[ ] out and distinctly claim[ ] the subject matter which the applicant regards as his invention” as required by law. 35 U.S.C. §112 ¶ 2.

II. ARGUMENT

1. through 4.

The construction of these claim elements is addressed in the Round 2 Satellite Defendants’ brief.

5. receiving the transmitted compressed, digitized data representing a complete copy of the at least one item of audio/video information, at a local distribution system remote from the central processing location ('863 Patent, Claims 14 and 17)

This claim element adds yet another ill-defined term to the litany of others present in the Yurt patents: “local distribution system”. This term, like the terms “central processing location” (discussed in the Round 2 Satellite Defendants’ brief) and “subscriber receiving station” (discussed in § 8, *infra*) is not present in the specification, and makes its first appearance in claims 14 and 17 in the ‘863 patent. Like these other two terms, it renders each claim in which it appears indefinite.

Every patent specification must “conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.” 35

U.S.C. § 112. Claims that are "not amenable to construction" or "insolubly ambiguous" are indefinite. *Datamize, LLC v. Plumtree Software, Inc.*, 417 F.3d 1342, 1347 (Fed. Cir. 2005). "[I]f reasonable efforts at claim construction prove futile" a claim term should be deemed indefinite. *Exxon Research & Eng'g Co. v. United States*, 265 F.3d 1371, 1375 (Fed. Cir. 2001).

Acacia asserts that the term "local distribution system" may be understood "from the context of the claims and the specification and the ordinary meaning of its constituent terms." *See* Acacia Br. at 25. The Round 2 Cable Defendants agree that a contextual analysis of the claims and the specification must be performed—and that such an analysis is compelled by Federal Circuit precedent. *See, e.g., Phillips* 415 F.3d at 1314 (Fed. Cir. 2005). However, we do not agree with the (distinct) conclusions reached by Acacia and the Satellite Defendants. When the context and components of the term "local distribution system" are examined, it is clear that the term is insolubly ambiguous and not amenable to construction, and the claims in which it appears are invalid for indefiniteness.

A. The entirety of the patent provides no definition or understanding of the term "local distribution system"

Initially, it should be noted that it is nonsensical to speak of the "context" provided by the specification, when the term "local distribution system" *never* appears in it (something Acacia and the Satellite Defendants recognize, but attempt to brush past). Instead of providing a context for what the "local distribution system" is, the specification sheds light on what the "local distribution system" *cannot* be: By inference, the term cannot mean the same thing as a "cable head end" or an "intermediate storage device"—since these claim terms have separate definitions or appear elsewhere in the patent. *See Trintec Indus., Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1296 (Fed. Cir. 2002) (holding that where claim terms are worded differently, each "imparts a different scope to the claim in which it appears"). Previously, this Court used exactly this sensible methodology in construing the term "unique identification code". *See Markman I*[2] at 13 ("Also separately defined in the specification *and thus* not to be considered a unique identification code is program notes and popularity code.")

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[2] *Markman I* refers to this Court's Markman Order in this case dated July 12, 2004 (Document

Here, both the term "cable head end" and "intermediate storage device" are separately defined in the specification and in the Yurt family of patents.[3] While these separate definitions clarify what the local distribution is *not*, there is nothing in the patent that illustrates what it *is*. The claims themselves shed no light on the term. There is no description of what the word "local" in "local distribution system" means. The term could have a variety of meanings—referring to a house, a street, a neighborhood, a city, a state, or a region. Given the possibilities, it was incumbent on the patentee to elucidate at least some definition of what was intended to be covered. This, the patentees did not do. While it is certainly true that a claim is not indefinite "merely because it poses a difficult issue of claim construction," *see Bancorp Servs., L.L.C. v Hartford Life Ins. Co.*, 359 F.3d 1367, 1371 (Fed. Cir. 2004), here the problem is not the *difficulty* of construction, but its insoluble ambiguity. Claims are *required* to be "sufficiently precise" so that a potential competitor may "determine whether or not he is infringing . . . ." *Morton Int'l v. Cardinal Chem. Co.*, 5 F.3d 1464, 1470 (Fed. Cir. 1993). Where a claim fails this test, it is "invalid for failure to satisfy the 'definiteness' requirement of section 112, second paragraph." *Id.* (finding claims invalid where the "claimed compounds cannot be identified by

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No. 175).

[3] The "cable head end" is specifically referred to and described in the specification '863:4:43-49. The specification states that that the "decompression of the requested material may preferably occur at the head end of a cable television reception system". *Id.* The box labeled "200'" in Fig 1f purportedly depicts the cable head end. And Acacia has represented to the Court that a head end is the "facility at a local cable TV office that originates and communicates cable TV services to subscribers." *See* Acacia's Opening Br. Re: '992 & '275 (Document No. 145) at 41, n.9. Further, other claims in the Yurt family of patents make specific references to the cable head end. *See, e.g.*, '275:20:45-46; 21:61-62; 21:27-30; 22:45-48; '992: 23:6-9; 26:7-10. Given these distinct references and definitions, the "local distribution system", whatever it is, must mean something different than a cable head end.

With respect to an "intermediate storage device", the specification refers to it as being represented by Figure 200c of Fig 1f. *See* '863:4:41-43. And the specification describes it as including "sixteen hours of random access internal audio and video storage." '863:5:21-22. Acacia has proposed (and Round 1 and 2 Defendants agree) that the term "intermediate storage device" be construed as "a storage device that is between the transmission system and the receiving system." *See* Acacia Opening Br. Re: '992 and '275 (Document No. 145) at 91. Given this definition of the "intermediate storage device", the "local distribution system" must be distinguished from it as well.

Similarly, the "local distribution system" must also be distinguishable from a "reception system," which the Court has construed to mean "an assembly of elements, hardware and software, capable of functioning together to receive items of information." *Markman I* at 28.

testing and that one skilled in the art could not determine whether a given compound was within the scope of the claims") (emphasis added). Here, there is no way for anyone to determine what the patentees meant by the word "local" in the context of a "local distribution system".

To the extent that the patentees intended to use the word "local" in "local distribution system" as a means to distinguish the latter from non-local distribution systems, they apparently intended to use the word "local" as a word of degree. However, "[w]hen a word of degree is used the district court must determine whether the patent's specification provides some standard for measuring that degree." *Seattle Box Co. v. Industrial Crating & Packing, Inc.*, 731 F.2d 818, 826 (Fed. Cir. 1984). Thus, for example, a patent claim could not use the term "a large number" unless, at a minimum, the specification explains whether 10 is considered to be a large number, or 100, or 1000.

Here, as noted, the term "local distribution system" does not even appear in the specification. Thus, the specification sheds no light at all on whether a particular distribution system should be considered "local" or "non-local." Is a system that covers a city "local"? Does it matter if the city is small, like Paducah, Kentucky, or large, like Los Angeles? What about a system that covers a County, or a State, or a group of States? Since the specification is utterly silent on this point, one can only guess.

Faced with the impossibility of construing "local" in the '863 patent, Acacia has chosen to ignore the word altogether. According to Acacia, "local" imposes *no* geographic limitation whatsoever, and a system that distributes information to "broad geographic regions" is still to be considered "local". *See* Acacia Br. at 26:15-27:9. But while this may be the best that Acacia can do, since any other construction would be unsupported and unsupportable, it defies the rules of claim construction, which eschew constructions that would render claim terms meaningless. *See, e.g.*, *Merck & Co. v. Teva Pharms. USA, Inc.*, 395 F.3d 1364, 1372 (Fed. Cir. 2005).

Simply stated, a potential competitor seeking to determine whether his system infringes would have no way to do so, since it is impossible to determine just how "local" the claimed "local distribution system" is. Therefore, the claims that use this term should be declared indefinite.[4]

B. Acacia's definition of "local distribution system" violates basic rules of claim construction

Acacia attempts to impart a largely functional definition to the term "local distribution system." Acacia states that the functions of a "local distribution system" are as follows: "(1) receive information sent from the central processing location; (2) store the received information; (3) decompress the compressed, digitized data; and (3) [sic] transmit a representation of the stored information to at least one of a plurality of subscriber receiving stations." *See* Acacia Br. at 26.

While functional definitions are not *per se* impermissible, they "present a problem of definiteness under the second paragraph of Section 112 [if they] fail[ ] to provide a clear indication of what subject matter is within the claim." *Donald S. Chisum, Chisum on Patents* § 8.04[3] (2005). Here, the term "local distribution system" never appears in the specification and the claims themselves do not provide a description of the structure claimed. Without such a description, there is no indication of the subject matter claimed.[5] *See Markman II*[6] at 16, 18 (declaring "identification encoder" to be indefinite because "although some of the functions of the 'identification encoder' are set out, there is no description of a structure which performs those functions"); *Markman II* at 13, n. 3 (rejecting one definition of the term "sequence encoder" in part because the definition would not "teach any structure . . . from which such functions could be deduced"); *Genentech Inc. v. Wellcome Found.*, 29 F.3d 1555, 1565 (Fed. Cir. 1994) ("A conclusion that the phrase 'human tissue plasminogen activator' is also defined in functional terms would give rise to a definiteness problem because a competitor could not then reasonably determine what DNA sequences are within the scope of the claims and which are not.") (emphasis added). Here, Acacia's functional definition does not provide any clues as to the actual subject matter of the claimed "local distribution system."

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[4] The Satellite Defendants extract a meaning for "local" by equating the "local distribution system" to a cable head end. Joint Chart §5. However, as noted above, the inventors specifically referred to the head end of a cable television system several times in the Yurt family of patents, both in the specification and in other claims, when they intended to do so. The head end therefore is not analogous to a local distribution system.

[5] Acacia attempts to get around this problem by trying to relate its proposed definition to that of the "transmission system". But the two terms cannot be treated similarly: The term "transmission system" *appears* in the specification. Acacia also *falsely* states that the Court has construed "receiving system" in a similar way. (Acacia Br. at 26.) However, the term "receiving system" has not been construed by the Court and, in fact, its indefiniteness is the subject of extensive briefing by Round 1 and 2 Defendants.

[6] *Markman II* refers to the Court's Order entitled "Further Claim Construction Order ; Order

Worse, as noted, Acacia's proposed construction simply ignores the word "local" in "local distribution system." The functions ascribed to a "local distribution system" in claims 14 and 17 by Acacia are similar to those performed by the "distribution system" in claim 12 of the patent (which depends from claim 11 and 10) in which the distribution system contains means for receiving and storing information ('863:21:12-14), as well as decompressing ('863:21:25-27) and transmitting ('863:21:16-18) information. Acacia would have the "distribution system" of claim 12 be the same as the "local distribution system" of claims 14 and 17. But this would violate the claim construction norm that where claim terms are worded differently, each "imparts a different scope to the claim in which it appears." *Trintec Indus., Inc.*, 295 F.3d at 1296.

It bears noting that the confusing, contradictory and incomprehensible nature of the Yurt family of patents has forced Acacia, again and again, to attempt to equate claim terms that are undefined and appear out of nowhere (such as "local distribution system") with others that *do* appear in the specification. However, the Court has rejected such efforts in the past. For example, with respect to the '702 patent in the Yurt family, this Court specifically rejected an attempt by Acacia to equate the term "sequence encoder" (a term that appears in claim 1 of the '702 patent but, like "local distribution system" never appears in the specification) to "time encoder". *Markman II* at 6-15. This Court correctly noted that it could not "infer that the 'sequence encoder' is a 'time encoder' as that term is used in the patent specification" and concluded that the term "sequence encoder" was indefinite. *Markman II* at 13. The analysis here is no different. Acacia's attempt at ignoring the word "local" in "local distribution system" is an effort to redraft an indefinite term appearing nowhere in the specification and transform it into a term "distribution system" that *is* present in the patent claims and specification. But the

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Finding Claims Terms Indefinite And Claims Invalid" dated Dec. 7, 2005(Document No. 119).

Court is not permitted to redraft claims to sustain their validity. *See, e.g.*, *Chef Am., Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1374 (Fed. Cir. 2004) (noting that "courts may not redraft claims, whether to make them operable or to sustain their validity").

Acacia attempts to distract attention from the indefiniteness of "local distribution system" by selectively citing *Bancorp Services*, 359 F.3d 1367, for the proposition that a claim term is not indefinite even if it is not used in the specification. However, a full reading of *Bancorp* hurts rather than helps Acacia's case: In *Bancorp*, the term at issue, which the District Court deemed indefinite, was "surrender value protected investments". *See id.* at 1372-73. While the term was not used in the specification, a closely-related term "SVP" *was* and the Federal Circuit noted the correspondence between the two:

> We agree with Bancorp that the correspondence between the reference to "surrender value protected investment writer" *in the specified claims* and the reference to "SVP writer" *in the portion of the specification relating to those claims* provides substantial support for Bancorp's contention that, as used in the patent, the terms "stable value protected investment," "surrender value protected investment," and "SVP" are equivalent. Indeed, Hartford offers no satisfactory alternative explanation for the apparent correspondence between the term "surrender value protected investment" and the acronym "SVP" in claims 4, 12, 23, and 32, and the portion of the specification dealing with the subject matter of those claims.

Id. at 1373 (emphasis added). The Federal Circuit then proceeded to reverse the District Court's finding of indefiniteness. Here, there is no equivalent or corresponding term (*e.g.*, "LDS") that is used in the specification that remotely relates to the "local distribution system." Without a definition, or even hints, of what a "local distribution system" is, a competitor would have no way to determine whether or not he infringes. This term therefore violates the Patent Act's requirement to "particularly point[] out and distinctly claim[] the alleged invention," and the Court should find that the claims that use the term are invalid as indefinite.[7] 35 U.S.C. §112.

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[7] Acacia also cites *Network Commerce, Inc. v. Microsoft Corp*, 422 F.3d 1353 (Fed. Cir. 2005) for the proposition that a claim term not used in the specification may be construed by the Court. Round 2 Defendants do not deny this self-evident proposition; however in *Network Commerce*, the Court construed the term "download component" by using references to the similar term "download file" in the specification. *See Network Commerce*, 422 F.3d at 1360-61. Here there is no term to analogize to. Acacia also cites *Wilson Sporting Goods Co. v. Hillerich & Bradsby Co.*, 442 F.3d 1322 (Fed. Cir. 2006) for the same proposition. However, in *Wilson*, the Court, after noting that "[t]he record . . . contains no evidence that 'annular' has a peculiar meaning in the field of art encompassed by the '398 patent" construed it to give its "widely-accepted

6. "Storing the Received Compressed Digitized Data Representing the Complete copy of the at Least One Item at the Local Distribution System" ('863 Patent, Claims 14 and 17)

While the parties disagree over the term "local distribution system" (as set forth in Section 5 above), they substantially agree on the meaning of "storing the received compressed digitized data representing the complete copy of the at least one item." Both Acacia and the Round 1 and 2 Defendants have construed this phrase to mean "storing a copy such that all of the received data is in storage at the same time." The Round 3 Defendants have proposed a construction that is phrased differently but that differs little in substance, apart from adding the requirement that all the data be stored "in the same storage device." All of the parties' constructions require that this storage step be completed before the transmission step begins—or, as Acacia puts it, that "the stored compressed digitized data is transmitted to users only *after* all of the received compressed, digitized data representing a complete copy of the at least one item has been received and stored in its entirety at the local distribution system." *See* Acacia Br. at 32 (emphasis in original).

7. "In Response to the Stored Compressed, Digitized Data, Transmitting a Representation of the At Least One Item at a Real-Time Rate ('863 Patent, Claim 14)

The construction of this claim element is addressed in the Round 2 Satellite Defendants' brief.

8. "At Least One of a Plurality of Subscriber Receiving Stations Coupled to the Local Distribution System" ('863 Patent, Claim 14)

Like the term "local distribution system," the term "subscriber receiving station" makes its first appearance, without introduction, in claim 14. The specification and diagrams never mention a "subscriber receiving station," or any other kind of "station" for that matter. Further, while Acacia contends that the word "station" has an ordinary meaning in the art, it asserts that "subscriber receiving station" does *not* incorporate that ordinary meaning. Instead, faced yet again with an undefined term and a total absence of any disclosure, Acacia again attempts to equate this invented term to an altogether *different* term in the patents—in this case, "reception

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meaning." *Wilson Sporting Goods*, 442 F.3d at 1328. Here, the term "local distribution system"

system." Because Acacia's definition violates the rules of claim construction, and the patents themselves disclose nothing about the meaning of this term, it is "not amenable to construction" and every claim that uses it is indefinite. *See Datamize*, 417 F.3d at 1347.

Contrary to Acacia's proposed construction, nearly all that *can* be known for certain about "subscriber receiving station" in the Yurt patents is that it means something different than "reception system" or "receiving system" (a term which is itself indefinite in the patents). Under well-settled rules of claim construction, the patentees' use of facially different terms denotes that each term has a different scope. *See Trintec Indus., Inc.*, 295 F.3d at 1296 (holding that where claim terms are worded differently, each "imparts a different scope to the claim in which it appears"). Moreover, the patents plainly use the terms distinctly, even within the same claim element. For instance, claim 4 of the '720 patent recites a "*reception system* in data communication with a plurality of *subscriber selectable receiving stations*." ('720:19:44-46 (emphasis added).) The patentees' use of two different terms "in close proximity in the same claim gives rise to an inference that a different meaning should be assigned to each." *Bancorp Servs., L.L.C.*, 359 F.3d at 1373. *See also Innova/Pure Water, Inc. v. Safari Water Filtration Sys.*, 381 F.3d 1111, 1119 (Fed. Cir. 2004) ("[W]hen an applicant uses different terms in a claim it is permissible to infer that he intended his choice of different terms to reflect a differentiation in the meaning of those terms.").

While it is clear that "subscriber receiving station" must be distinguished from "reception system" and "receiving system," the Yurt patents provide no illumination of what a "subscriber receiving station" is. The claims in which the term appears (or in which the related term "subscriber selectable receiving station" appears) not only disclose no *structure* associated with the term, but they disclose no *function* associated with it either. *See* '863 cl. 14-19; '720 cl. 4-11. Instead, the sum total of what the patents disclose about a "subscriber receiving station" is that:

1. Information may be transmitted to it from a "local distribution system" or a "reception system." *See, e.g.,* '863 cl. 14, '720 cl. 4. But all manner of different things may have information "transmitted to" them, so this alone reveals virtually

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has no such widely-accepted meaning.

nothing about what a "subscriber receiving station" is or what it does, let alone how it differs from a "reception system" and a "receiving system."[8]

2. It may be "coupled to" (directly connected to or attached to) a "local distribution system." *See, e.g.*, '863 cl. 14. But saying that a "subscriber receiving station" may be connected or attached to something else—particularly to another term which itself has no meaning—again reveals virtually nothing about the structure or function of a "subscriber receiving station."

3. It may be "at a premises geographically separated from" the "reception system" or the "local distribution system." *See, e.g.*, '720 cl. 4 and 8. But again, merely saying that a "subscriber receiving station" may be at a different location than these other elements reveals virtually nothing about its structure or its function.

Thus, neither the specification (which omits any mention of the term entirely) nor the claims disclose anything about the structure or function of a "subscribing receiving station" to illuminate how it differs from a "reception system" and a "receiving system," or how it should be construed.

Faced with this complete absence of disclosure, Acacia has grasped to find an "ordinary meaning" for the term "subscriber receiving station"—and then tried to distance itself from that meaning. Citing to the ninth definition in a 1993 Webster's dictionary—one apparently meant to apply to the usage "radio station" or "television station"—Acacia asserts that "the term 'station' has an ordinary usage of 'a complete assemblage of radio or television equipment including antenna, transmitting or receiving set, and signal making or reproducing device.'" *See* Acacia Br. at 33:22-24. Based on this asserted ordinary meaning, therefore, Acacia apparently would contend that a "subscriber receiving station" must comprise, at a minimum, "a complete assemblage of radio or television equipment including antenna, transmitting or receiving set, and signal making or reproducing device."

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[8] The patents are silent as to what occurs *after* information is transmitted to a "subscriber receiving station." Indeed, while one might assume that the "subscriber receiving station" at least *receives* the information, the patents do not recite this. Nor do the patents disclose anything about display or playback occurring on a "subscriber receiving station," as the Round 3

In the next breath, however, Acacia abandons this asserted ordinary meaning, and argues instead that "subscriber receiving station" should have the same meaning as "reception system." Acacia asserts that "the specification describes a system . . . which includes the equipment described as part of a 'station,'" and cites to column 17, lines 18 through 61 and Figure 6 of the '863 patent. *See* Acacia Br. at 33:25-34:5. But that cited passage describes "a preferred implementation of the *reception system* 200"—not a "subscriber receiving station," a term that the patents specifically use to mean something *different* than "reception system." *See* '863:17:18-20. For this reason alone, the portion of the specification that Acacia relies upon is inapposite.

In addition, however, in trying to equate these distinct terms (and thereby bestow some meaning on "subscriber receiving station"), Acacia defies credulity. After first asserting that the ordinary meaning of "station" requires it to include "an antenna," Acacia argues that the description of the "reception system" inherently discloses an antenna, and further, that the antenna may not be an antenna at all, but rather may be a "modem" or a "data coupler"—items which are different from an antenna, and moreover, which the patent discloses as embodiments of structure 122 in the *transmission system*, not the reception system. *See* Acacia Br. at 33:25-34:2 (citing '863:16:12-16); *see also* '863:5:55-57 (noting that Fig. 2b is a diagram of a preferred implementation of the transmission system). Similarly, after asserting that the ordinary meaning of "station" requires it to include a "signal making or reproducing device," Acacia argues that "reproducing" corresponds to different functions entirely in the reception system, including formatting, conversion, decompression, and playback. *See* Acacia Br. at 34:3-5.

By this sleight of hand, Acacia winds up urging the Court to adopt a construction of "subscriber receiving station" that would render it virtually synonymous with "reception system." The Court has already construed "reception system" to mean "an assembly of elements, hardware and software, capable of functioning together to receive items of information." *Markman I* at 28:21-22. Acacia now asks the Court to construe "subscriber receiving station" to mean "an assembly of elements, hardware and software, capable of

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Defendants propose in their construction.

functioning together to receive a representation of an item of audio/video information." The limitation that the item of information be "audio/video" information is already separately present in every claim that includes the term "subscriber receiving station," and therefore including it in the definition adds nothing. *See* '863 cl. 14-19; '720 cl. 4-11. Further, considering that Acacia construes "representation" to mean "reproduction", *see* Acacia Br. at 29:3-4, there is no functional difference under Acacia's constructions between an assemblage of elements capable of receiving an item, and an assemblage of elements capable of receiving a "representation" of an item.

Thus, Acacia asks the Court to construe "subscriber receiving station" so as to render the claims that include that term identical in scope to what they would be if they instead recited a "reception system"—eliminating the difference between these terms, and violating the rules of claim construction. *See Trintec Indus., Inc.* , 295 F.3d at 1296. Further, while the patents disclose virtually nothing about the structure or function of a "subscriber receiving station," Acacia asks the Court to construe the term in a way that eliminates the elements that Acacia itself asserts are required under the ordinary meaning of "station"—"a complete assemblage of radio or television equipment including antenna, transmitting or receiving set, and signal making or reproducing device." Because the patents disclose nothing about the meaning of this term, and the only proffered constructions are untenable, the Court should declare the term "subscriber receiving station" to be indefinite.

9. "Decompressing the Compressed, Digitized Data Representing the at Least One Item of Audio/Video Information After the Transmission Step Wherein the Decompressing Step is Performed in the Local Distribution System to Produce the Representation of the at Least One Item for Transmission To The At Least One Subscriber Station" ('863 Patent, Claim 14)

This claim element is indefinite because it uses the terms "local distribution system", "representation" and "subscriber station"—all of which are insolubly ambiguous or not amenable to construction. The first two terms have already been discussed. *See supra*, §§5, 7. With respect to the "subscriber station", it is clear from the context of claim 14 in which it appears, that the term refers to "subscriber receiving station", which as discussed in §8 is not amenable to construction. The Court should therefore find that the above claim element is indefinite on any one of these grounds.

10. through 15.

The construction of these claim elements is addressed in the Round 2 Satellite Defendants' brief.

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